

16-534 RUBIN V. ISLAMIC REPUBLIC OF IRAN

DECISION BELOW: 830 F.3d 470

LOWER COURT CASE NUMBER: 14-1935

QUESTION PRESENTED:

1. Under the original execution immunity provisions of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602, *et seq.* (the "FSIA"), plaintiffs holding terrorism judgments against designated state sponsors of terrorism "faced practical and legal difficulties at the enforcement stage." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1317-18 (2016). "[O]nly foreign-state property located in the United States and 'used for a commercial activity' was available for the satisfaction of judgments." *Id.* at 1318. In 2008, Congress enacted 28 U.S.C. § 1610(g) to expand the availability of assets for postjudgment execution against the property of foreign state sponsors of terrorism, their agencies and instrumentalities. *Id.* at 1318 n.2.

The Seventh Circuit held below that section 1610(g) merely amends the existing attachment immunity provisions to enable terrorism judgment creditors to enforce their judgments against the foreign governments' instrumentalities that have been established as separate juridical entities. This holding conflicts with the Ninth Circuit's decision in *Bennett v. Islamic Republic of Iran*, 825 F.3d 950 (9th Cir. 2016), which held that section 1610(g) provides a freestanding attachment immunity exception, which ***in addition to*** enabling veil piercing, allows terrorism victims to attach and execute upon ***any*** assets of foreign state sponsors of terrorism, their agencies, or instrumentalities regardless of whether the assets are connected to commercial activity in the United States.(1)

The first question presented for review is:

Whether 28 U.S.C. § 1610(g) provides a freestanding attachment immunity exception that allows terror victim judgment creditors to attach and execute upon assets of foreign state sponsors of terrorism regardless of whether the assets are otherwise subject to execution under section 1610.

2. Section 1610(a) is another execution immunity provision of the FSIA. It enables execution upon "property in the United States of a foreign state ... ***used for a commercial activity*** in the United States" under certain specified conditions enumerated in the statute. The statutory text refers to the commercial use without respect to any particular actor.

The second question presented for review is:

Whether the commercial use exception to execution immunity, codified at 28 U.S.C. § 1610(a), applies to a foreign sovereign's property located in the United States only when the property is used by the foreign state itself.

(1) Iran has filed a petition for a writ of certiorari challenging the Ninth Circuit's *Bennett* decision based upon the conflict with the Seventh Circuit's decision below as to the construction of section 1610(g). See Supreme Court Case No. 16-334.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 6/27/2017